



OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA63

Executive Branch Ethics Program; Technical Correction

AGENCY: Office of Government Ethics.

ACTION: Final rule; technical correction.

SUMMARY: The Office of Government Ethics (OGE) is issuing a technical correction to the executive branch ethics program regulation that describes OGE’s written guidance, following the inadvertent removal of certain paragraphs in the regulation that occurred when it was revised in August 2020.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patrick J. Lightfoot, Associate Counsel, or Margaret Dylus-Yukins, Assistant Counsel; Telephone: 202-482-9300.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 2020, the U.S. Office of Government Ethics (OGE) issued new regulations at 5 CFR part 2611, which set forth processes and procedures for OGE’s issuance of guidance documents as required by Executive Order 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents” (October 9, 2019). 85 FR 51301 (August 20, 2020). In that same August 2020 rulemaking, OGE made a technical modification to 5 CFR 2638.208 “to replace the term ‘guidance documents’

with the phrase ‘written guidance’ in order to reduce any potential confusion” with the new 5 CFR part 2611 regulation in which “guidance document” had become a specific term of art. Id. The regulations at 5 CFR part 2611 were later removed pursuant to Executive Order 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation” (January 20, 2021). See 86 FR 25801 (May 11, 2021).

Although the intent of this technical change was to replace only that phrasing in 5 CFR 2638.208, OGE’s instructions to the **Federal Register** were unclear, and resulted in the inadvertent deletion of paragraphs (a), (b), and (c) in 5 CFR 2638.208. To correct this error, OGE is issuing this technical rulemaking to add paragraphs (a), (b), and (c) back into 5 CFR 2638.208 as they existed before the August 20, 2020, amendments. OGE has made no substantive change to the text of these paragraphs, which will once again read as they did when 5 CFR part 2638 was updated in 2016. *See* 81 FR 76271 (November 2, 2016).

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(A), as Director of the Office of Government Ethics, the notice and comment procedures are being waived because these amendments concern matters of agency organization, procedure and practice.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Executive Order 13175

The Office of Government Ethics has evaluated this final rule under the criteria set forth in E.O. 13175 and determined that tribal consultation is not required as this final rule has no substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 9, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons stated in the preamble, the U.S. Office of Government Ethics amends 5 CFR part 2638 by making the following technical correction:

PART 2638 – EXECUTIVE BRANCH ETHICS PROGRAM

1. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. 101–505; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Revise § 2638.208 to read as follows:

§ 2638.208 Written guidance on the executive branch ethics program.

This section describes several means by which the Office of Government Ethics provides agencies, employees, and the public with written guidance regarding its legal interpretations, program requirements, and educational offerings. Normally, written guidance is published on the official website of the Office of Government Ethics, www.oge.gov.

(a) *Legal advisories*. The Office of Government Ethics issues legal advisories, which are memoranda regarding the interpretation of government ethics laws and regulations. They are intended primarily to provide education and notice to executive branch ethics officials; prospective, current, and former executive branch employees; and individuals who interact with the executive branch.

(b) *Program advisories*. The Office of Government Ethics issues program advisories, which are memoranda regarding the requirements or procedures applicable to the executive branch ethics program and individual agency ethics programs. They are intended primarily to instruct agencies on uniform procedures for the executive branch ethics program.

(c) *Informal advisory opinions*. Upon request or upon its own initiative, the Office of Government Ethics issues informal advisory opinions. Informal advisory opinions address subjects that in the opinion of the Director do not meet the criteria for issuance of formal advisory opinions. They are intended primarily to provide guidance to individuals and illustrate the application of government ethics laws and regulations to specific circumstances.